

GARY HOWARD KIDGELL, IN PRO PER  
30 Buckingham Drive, #315  
Santa Clara, CA 95051  
Telephone: (408) 246-2981

Plaintiff: GARY HOWARD KIDGELL, IN PRO PER

FILED

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U.S. DISTRICT COURT  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

GARY HOWARD KIDGELL,

Plaintiff,

v.

COUNTY OF SANTA CLARA;  
COUNTY OF SANTA CLARA  
SHERIFF'S DEPT.; UNKNOWN  
DEPUTY SHERIFF SERGEANT;  
UNKNOWN DEPUTY SHERIFFS  
DEPARTMENT CORRECTION  
OFFICERS; AND DOES 1 through 50,

Defendants.

Case No.: C 08-01965-JW-RS

**AMENDED COMPLAINT FOR  
BATTERY, EXCESSIVE FORCE,  
PUBLIC ENTITY AND EMPLOYEE  
LIABILITY, CIVIL RIGHTS  
VIOLATIONS, UNRUH ACT  
VIOLATIONS, DAMAGES**

PLAINTIFF GARY KIDGELL IN PRO PER ALLEGES:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff is and was at all times mentioned herein a citizen of Santa Clara, California.
2. The County of Santa Clara, the Santa Clara County Sheriff's Department and Doe Defendants 1 through 50 are government entities or employees of government entities doing business in Santa Clara County, California.

1           3.     Plaintiff is ignorant of the true names and capacities of those sued herein as Does  
2 1 through 50 and therefore sues the defendants by such fictitious names. Plaintiff will amend  
3 this Complaint to allege their true names and capacities when ascertained.

4           4.     Defendants at all times mentioned herein were the employers or representatives,  
5 agents and employees of their Co-Defendants and in doing the things alleged were acting within  
6 the course and scope of the representation and agency and with the permission and consent of  
7 their Co-Defendants, thereafter ratified their acts and conduct.

8           5.     The Individual Defendants, both as agents for the Employer defendants and in  
9 their individual capacities, engaged in conduct that was malicious, with the intent to cause injury,  
10 despicable and done with a willful and knowing disregard for the rights and safety of Plaintiff  
11 and were aware of the probable dangerous consequences of their conduct and deliberately failed  
12 to avoid those consequences.

13           6.     The Individual Defendants, both in their capacity as agents for their Employer  
14 Defendants and in their individual capacities, acted with oppression in that their conduct was  
15 despicable and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights.  
16 Defendant's conduct was despicable, so vile, base and contemptible that it may be looked down  
17 on and despised by reasonable people.

18           7.     The Individual Defendants were managing agents of their employers and  
19 exercised substantial independent authority on judgment in performing the acts alleged. The  
20 Employer Defendants knew of their agents' wrongful conduct and adopted and approved and  
21 ratified it both before and after the conduct occurred.

22                           **DAMAGES ALLEGATIONS**

23           8.     Plaintiff hereby re-alleges and incorporates by reference herein as if fully set  
24 forth. Paragraphs 1 through 7 of this Complaint.

25           9.     As a proximate result of the acts of Defendants herein alleged, Plaintiff was  
26 compelled to secure the services of an attorney for which Plaintiff was, and will become required  
27 to expend money to his damage.



1        10. As a further proximate result of the acts of Defendants as alleged, Plaintiff was  
2 required to and did employ physicians and other medical treaters for medical examination,  
3 treatment and care and did incur medical and incidental expenses.

4        11. As a proximate result of the acts of Defendants, Plaintiff was injured in his health,  
5 strength and activity, sustaining injury to his body and shock and injury to his nervous system  
6 and person, and, among others, sustained emotional and physical distress, highly unpleasant  
7 emotional reactions, including fright, shock, nervousness, anxiety, worry, horror, grief,  
8 mortification, humiliation, embarrassment, indignity, apprehension, fear and terror, all of which  
9 injuries have caused Plaintiff to suffer extreme and severe physical pain and mental anguish.  
10 These injuries will result in some permanent disability to Plaintiff, all to his general damages in a  
11 sum unknown at this time.

12                                    **FACTUAL ALLEGATIONS**

13        12. Plaintiff hereby re-alleges and incorporates by reference herein as if fully set forth,  
14 Paragraphs 1 through 11 of this Complaint.

15        13. On or around 10:30 p.m., on New Year's Even, December 31, 2007, Kidgell, his  
16 wife, and a friend, met at a pub named Molly McGee's located at 2410 Castro Street in Mountain  
17 View, California, to welcome the New Year. Kidgell had no more than four rum and Coca-Cola  
18 drinks while at Molly McGee's.

19        14. The three of them visited, danced and enjoyed the evening until approximately 1:30  
20 p.m. Then Kidgell and his wife left to walk north on the east side of Castro Street to the train  
21 station to go home.

22        15. Kidgell was boisterous on Castro Street outside Molly McGee's and attracted the  
23 attention of a Mountain View Police Officer who arrested him on suspicion of being intoxicated  
24 in a public place, a violation of Penal Code 647f. No blood-alcohol test was ever performed on  
25 Kidgell.

26        16. Kidgell was handcuffed and placed in the back of a City of Mountain View Police  
27 Department transport vehicle and taken to the City of Mountain View Police Department where  
28 two other recent arrestees were placed in the vehicle with him. The City of Mountain View

1 police transport vehicle then took the three of them to Santa Clara County jail at 180 W. Hedding  
2 Street in San Jose, California.

3 17. Kidgell was taken out of the City of Mountain View Police Department transport  
4 vehicle at the Santa Clara County Main Jail Processing Center on Hedding Street in the City of  
5 San Jose, California. Inside the processing center Kidgell was handcuffed to one of several steel  
6 chairs in the middle of the processing center. The chairs are attached by bolts to the floor and  
7 have steel armrests with handcuffs attached to the armrests. Each of Kidgell's wrists were  
8 handcuffed to the steel chair by the armrest handcuffs.

9 18. After approximately 5 minutes, Kidgell was taken to a pre-booking desk, and then  
10 placed back to a steel chair and re-handcuffed as before. Kidgell then sat in the steel chair for  
11 approximately two hours.

12 19. Kidgell was angry at what he considered an unjust arrest and incarceration and spoke  
13 loudly and critically to nearby deputy sheriffs who were on duty. Kidgell then stopped speaking  
14 to the deputies and sat quietly.

15 20. After Kidgell had been sitting quietly for approximately 20 to 30 minutes, a Sergeant  
16 and two other deputies approached him and the Sergeant said to Kidgell that they were "going to  
17 show him what a move is."

18 21. The two deputies un-handcuffed Kidgell from the steel chair and pulled him to his  
19 feet. Then, each deputy took one of his arms, placed each upper arm in a horizontal position  
20 straight out from his shoulder and parallel to the floor, and placed each of his forearms in a  
21 vertical position, straight up and in the same plane as were his upper arms.

22 22. The two deputies then held each of Kidgell's arms braced in the above-described  
23 position and pushed his hands down and backward, palms upward, so that each of his wrists were  
24 bent backward at more than their normal range of motion. The angle between the back of  
25 Kidgell's hand and his forearm was less than 90 degrees. Kidgell asked the deputies to "please  
26 don't break my wrists." In response, the deputies increased the downward pressure on each of  
27 his hands.  
28





32. Defendants, acting or purporting to act in the performance of their official duties, deprived Plaintiff of his Civil Right to be free of unreasonable search and seizure as a result of the official policy and/or custom of the Employer Defendants.

33. Defendants, acting or purporting to act in the performance of their official duties, acted with deliberate indifference to the need to train its officers/employees adequately and having training programs adequate to train its officers/employees to properly handle usual and recurring situations.

34. Plaintiff was harmed and Defendants' conduct was a substantial factor in causing Plaintiff's harm.

**THIRD CAUSE OF ACTION**  
**FOR VIOLATION OF CALIFORNIA CIVIL CODE §52.1**  
**AGAINST ALL DEFENDANTS**

35. Plaintiff hereby re-alleges and incorporates by reference herein as though fully set forth, paragraphs 1 through 34 of this complaint.

36. All Defendants, while acting under California law, interfered and attempted to interfere, with Plaintiff's right to be free of unreasonable search and seizure, by threats, intimidation, coercion, and attempted to interfere by threats, intimidation or coercion with Plaintiff's exercise or enjoyment of rights secured by the Constitution of the United States and rights secured by the Constitution and laws of the State of California.

37. All Defendants aided, incited, and conspired in the denial of Plaintiff's civil rights and are liable for all actual damages suffered by Plaintiff, and in addition, the damages provided by law and statute.

WHEREFORE, Plaintiff prays for judgment against the County of Santa Clara and individual defendants whose names are unknown as follows:

1. For all medical and incidental expenses, past and future, according to proof;
2. For all lost income, past and future, according to proof;
3. For pain and suffering and general damages according to proof;
4. For attorney's fees;

5. For all damages to which Plaintiff is entitled under section 52.1 of the California Code of Civil Procedure, and 42 U.S.C. 1983;
6. For all costs of suit herein; and
7. For such other and further relief as the Court may deem proper.

Dated:

  
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Gary Kidgell, Plaintiff in Pro Per